National Labor Relations Board Weekly Summary of



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Atlas Refinery, Inc. (22-CA-28403; 354 NLRB No. 120) Newark, NJ, Jan. 15, 2010. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act, by threatening to discharge employees who would not return to work under its unlawfully unilaterally imposed conditions; and by soliciting employees to withdraw from the Union. The Board also adopted the judge's findings the Respondent violated Section 8(a)(3) and (1), by discharging five unit employees because they supported the Union's efforts to continue collective bargaining; and that the Respondent violated Section 8(a)(5) and (1) by (1) refusing to bargain with the Union so long as a recently discharged former steward was part of the bargaining committee, (2) unilaterally implementing new terms and conditions of employment on June 9, 2008 absent a valid impasse, and (3) locking out employees who would not accept the new terms. The Board further found that the Respondent unlawfully withdrew recognition from the Union in violation of Section 8(a)(5) and (1) based on letters of resignation from employees that the Respondent itself had unlawfully solicited. Those letters were tainted and the Respondent could not rely on them as evidence of the Union's loss of majority status. The judge, apparently inadvertently, did not specifically find and remedy that violation. The Board also let stand the judge's denial of the General Counsel's post-hearing motion amend the complaint to allege that the Respondent engaged in direct dealing. [HTML] [PDF]

With respect to the finding that the Respondent unlawfully refused to bargain so long as the former steward was on the Union's bargaining committee, Member Schaumber included a personal footnote stating that the Respondent offered no evidence that his presence would bring ill will to the negotiating table and make good faith bargaining impossible. He also included a footnote that the Respondent failed to show that further bargaining would be futile at a critical stage of the bargaining process. The parties had not yet discussed important provisions in the Respondent's final proposal, and there was no evidence substantiating the Respondent's claim to the Union that it needed to implement its final offer upon the expiration of the current contract for financial reasons.

Chairman Liebman found it unnecessary to pass on the judge's failure to grant the General Counsel's motion, noted above, as the remedy for this additional violation would be cumulative in light of the Respondent's unlawful withdrawal of recognition.

(Chairman Liebman and Member Schaumber participated.)

Charge filed by Local 4-406, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO; complaint alleged violations of Section 8(a)(1), (3) and (5). Hearing held at Newark, April 21-24, 27-28, 2009. Adm. Law Judge Michael A. Rosas issued his decision Aug. 7, 2009.

Tower Automotive Operations USA I, LLC (13-CA-44668, 44894; 355 NLRB No. 1) Chicago, IL, Jan. 15, 2010. The Board dismissed the complaint, which alleged that the Employer violated Section 8(a)(3) and (1) of the Act when it terminated two employees, because the General Counsel failed to prove by a preponderance of the evidence that animus toward the employees' protected activity was a substantial or motivating factor for their respective terminations. Although the General Counsel presented evidence suggestive of an unlawful motive, including, disparate treatment, timing, and unprecedented work reviews, the Board declined to infer animus because the totality of the evidence in this case did not support such an inference. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

Charges filed by an individual; complaint alleged violations of Section 8(a)(3) and (1). Hearing held at Chicago, Jan. 26-29, 2009. Adm. Law Judge Michael A. Rosas issued his decision March 31, 2009.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION REPRESENTATIVE

Pro Transport-1, San Francisco, CA, 20-RC-18231, Jan. 12, 2010

DECISION AND DIRECTION[that Regional Director open and count ballots]

O'Connor Woods Housing Corporation, d/b/a O'Connor Woods, Stockton, CA, 32-RD-01581, Jan. 13, 2010

(In the following cases, the Board denied the requests for review of the Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of the Regional Directors)

Harvey Construction Corporation, Bedford, NH, 1-RC-22375, Jan. 14, 2010 (Chairman Liebman and Member Schaumber)

KeHe Food Distributors, Inc., Romeoville, IL, 13-RC-21875, Jan. 14, 2010 (Chairman Liebman and Member Schaumber)

L & H Signs, Inc., Reading, PA, 4-RD-02170, Jan. 13, 2010 (Chairman Liebman and Member Schaumber)

(Miscellaneous Board Order)

ORDER [affirming administrative dismissal of the petition]

KeHe Food Distributors, Inc., Romeoville, IL, 13-RC-21892, Jan. 14, 2010 (Chairman Liebman and Member Schaumber)
